IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7671 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANAIYALAL KANTILAL BRAHMBHATT - Petitioner(s)
Versus
BANK OF BARODA & 1 - Respondent(s)

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Appearance :
MR BHARAT T RAO for Petitioner(s) : 1,
MR DARSHAN M PARIKH for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/09/2006

ORAL JUDGMENT

1. The petitioner herein a retired employee of the Bank of Baroda seeks pensionary benefits. Particularly the petitioner challenges an order

dated 15-3-2005 by which the respondents rejected his claim for pension.

2. Short facts leading to the present petition are as follows :

2.1 The petitioner was in the service of the Bank. While in service, for certain illegalities committed by him, a criminal case was instituted against the petitioner. The criminal case eventually resulted into conviction against the petitioner. Though there was a conviction against the petitioner, he did not have to undergo imprisonment since he was granted the benefit of prohibition. The respondents initiated departmental inquiry against the petitioner and levelled several charges through a charge-sheet dated 12-08-2002. Eventually, the inquiry resulted into an order of penalty dated 13-2-2004 by which the Disciplinary Authority ordered compulsory retirement of the petitioner. In the order Disciplinary Authority observed that “ In view

of the above, I am of the opinion that the ends of justice in this case would be met if the penalty of "Compulsory Retirement with superannuation benefits as would be due at that stage and without disqualification from future employment" is imposed on Mr. Brahmbhatt as proposed in my notice dated 23-01-2004." Eventually, therefore, said order of compulsorily retiring the petitioner from service with superannuation benefits as would be due without disqualification from future employment, was imposed.

2.2 It is not in dispute that said order of penalty has become final and the petitioner has not challenged the same before the Appellate Authority.

2.3 The case of the petitioner however, is that despite the order of penalty of compulsory retirement, he is entitled to receive pension for his past service.

3. On the other hand, the case of respondent is that as per Regulation 33 of the Bank of Baroda (Employees') Pension Regulations, 1995 (here-in-after referred to as “the said Regulations”), it is a discretion available with the Bank whether to grant pension to the petitioner or not.

4. Learned advocate Shri Bharat T. Rao for the petitioner submitted that though the Disciplinary Authority had imposed the penalty of compulsory retirement, as per Regulation 33 of the said Regulations, in such cases, employees are entitled to receive pension as granted therein. He submitted that not granting pension to the petitioner would amount to double jeopardy. He also contended that Disciplinary Authority had specifically provided in the penalty order that compulsory retirement is ordered by way of penalty with superannuation benefits as would be due at the relevant time. The respondents now cannot refuse to pay the pension to the petitioner as envisaged under Section 33 of the said Regulations.

5. Learned advocate Shri Darshan Parikh for the respondents on the other hand opposed the petition. He submitted that the petitioner had committed serious misconduct. For proved charges, he was therefore, punished by way of penal order of compulsory retirement. In that view of the matter, it is contended that the petitioner cannot claim pension as a matter of right. Whether to grant pension or not in such a case would be a matter of discretion of the authorities. He also pointed out that learned Judge of this Court by order dated 24-01-2006 while admitting the petition permitted the petitioner to make representation and provided that it will be open for the respondents to consider the same for reconsidering the decision dated 15-3-2005. He submitted that therefore, this Court should not travel beyond what is provided by the leaned Judge in the order dated 24-1-2006.

6. Having heard learned advocates appearing for the

parties, at the outset, it can be noted that in the order dated 24-1-2006, this Court had not in any manner limited the scope of the petition. Learned Judge had only permitted the petitioner to make a representation and permitted the respondents to consider such a representation for reconsideration of the order dated 15-3-2005. In no way, any of the contentions of the petitioner were limited. In that view of the matter, I have considered the petition on merits and also examined the relevant contentions.

7. It is not in dispute that the petitioner for proved misconduct, was visited with penalty of compulsory retirement. In the order itself, Disciplinary Authority had clarified that punishment of compulsory retirement is being imposed with superannuation benefits due and payable. In that view of the matter, one has to examine the entitlement of the petitioner for superannuation benefits.

8. Chapter-V of the said Regulations provides for

Classes of Pension.

Regulation 28 pertains to superannuation pension and provides inter-alia that superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements.

Regulation 29 of the said Regulations pertains to pension on voluntary retirement. The said regulation inter-alia provides for an opportunity to an employee to retire on voluntary retirement basis after completing qualifying service of twenty years by giving notice of not less than three months. The Regulations further, envisages that if such a request is accepted, the employee shall be entitled to receive pro-rata pension.

Regulation 30 of the said Regulations provides for invalid pension. Sub-regulation(1) of Regulation 30 of the said Regulations provides that invalid pension may be granted to

an employee who has rendered minimum ten years of service and who retires from service on account of any bodily or mental infirmity which permanently incapacitates him for the service.

Regulation 31 provides for Compassionate Allowance. Sub-regulation(1) of Regulation 31 of the said Regulations inter-alia provides that an employee who is dismissed or removed or terminated from service, shall forfeit his pension. However, the authority higher than the authority competent to dismiss or remove or terminate the employee from service may sanction a compassionate allowance not exceeding two-thirds of the pension which would have been admissible to him on the basis of qualifying service rendered upto the date of dismissal, removal or termination.

Regulation 32 of the said Regulations provides for premature retirement pension. The same has to be granted to an employee who has rendered minimum ten years of service and who

retires from service on account of orders of the Bank to retire prematurely in the public interest.

Regulation 33 of the said Regulations provides for compulsory retirement pension. Regulation 33 reads as follows :

“33. Compulsory Retirement Pension.

(1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline and Appeal Regulation or Settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.

(2) whenever in the case of a bank employee the Competent Authority passes an order(whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

(3) A pension granted or awarded under sub-regulation(1) or, as the case may be, under sub-regulation(2), shall not be less than the amount of rupees three hundred and seventy five per mensem. “

9. It may also be noted that Regulation 22 of the said Regulations pertains to forfeiture of

service. Said regulation provides that resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

10. In light of this statutory provision, the claim of the petitioner and the opposition of the Bank are required to be examined.

11. From the provisions of regulations noted here-in-above, it can be seen straightway that the said Regulations have made provisions for different kinds of pension. Regulation 33 of the said Regulations pertain to compulsory retirement pension. Sub-regulation(1) of Regulation 33 of the said Regulations thereof clearly provides that an employee compulsorily retired from service by way of penalty in terms of Discipline and Appeal Regulation or Settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two-

thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date. Sub-regulation(2) of Regulation 33 of the said Regulations in turn provides that whenever in the case of a Bank employee the Competent Authority passes an order awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

12. To my mind the scheme of the said Regulations is amply clear. An employee who has to be retired on compulsory retirement basis by way of penalty is entitled to receive pension at-least to the extent of two third of his other-wise payable superannuation pension. The authority has discretion to fix such a pension anywhere between the minimum of two-third and maximum of of his full other-wise payable superannuation pension. The discretion does not travel beyond the said limits. The word “may” used in sub-

regulation(1) of Regulation 33 of the said Regulations only conveys the intention of the authorities to invest the competent authority with a discretion to grant pension between the two terminies. The word “may” used in Regulation 33 does not give discretion to the authority to refuse or to grant pension to the employee.

13. As noted earlier Chapter V of the said Regulations makes provisions for different kinds of pensions. These include Superannuation Pension, Pension on Voluntary Retirement, Invalid Pension, Compassionate Allowance, Premature Retirement Pension and Compulsory Retirement Pension. Each classes of pension has different connotation, different provisions and is granted for different purpose. Compulsory retirement is granted to an employee who is facing penalty of compulsory retirement. In his case, sub-regulation(1) of Regulation 33 of the said Regulations is to be applied and the authority specified therein has to take decision as to the quantum of pension to be paid to such

employee which may vary between a minimum of two-third and maximum full of his other-wise payable superannuation pension.

14. To the view I have adopted, there is enough indication in the Regulations itself. Regulation 22 of the said Regulations noted here-in-above provides inter-alia that resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Significantly, the term compulsory retirement has not been included in the said regulation for forfeiture of past service. Despite such forfeiture of service when the Bank wanted to leave scope for consideration of grant of compassionate pension, in case of employees who are dismissed, removed or terminated, provisions in this regard has been made in Regulation 31 of the said Regulations. The case of an employee facing penalty of compulsory retirement however, stands on different footing.

There is no reference to the term compulsory retirement in sub-regulation (1) of Regulation 22 of the said Regulations, which inter-alia provides for forfeiture of entire past service or of disqualification for pensionary benefits. In that view of the matter, the past service can be forfeited or pension withheld only to the extent the Regulations so permitted. Sub-regulation(1) of Regulation 33 of the said Regulations permits the authority to grant pension not less than two third or upto a maximum possible pension on the superannuation date. In other words not more than 1/3rd of the pension can be forfeited.

15. The Disciplinary Authority has also provided in the order of compulsory retirement that same is passed with superannuation benefits as would be due at that stage. The term used is superannuation benefits. Superannuation benefits in turn includes pension under Regulation 33. The petitioner wold therefore, be entitled to receive superannuation pension as granted in the

Regulation 33 of the said Regulations.

16. In the result, I am unable to uphold the stand of the Bank regarding the entitlement of the petitioner to receive pension. The impugned order dated 15-3-2005 is quashed. Simultaneously, order dated 24-1-2006 passed by the respondents pursuant to a representation made by the petitioner is also quashed. The petitioner is held entitled to receive pension as provided for in sub-regulation(1) of Regulation 33 of the said Regulations. The competent authority shall undertake exercise only for the purpose of considering the quantum of pension as provided therein. The stand of the respondent that it is solely the discretion of the Bank whether to grant pension or not to the petitioner, since he is facing the penalty of compulsory retirement, is not accepted. The respondents shall fix the pension at its discretion within the limits provided under sub-regulation(1) of Regulation 33 of the said Regulations as explained here-in-above.

17.These directions will be carried out within a period of two months for the date of receipt of a copy of this order.

18.With these directions, the petition is disposed of. Rule made absolute with no order as to costs.

(Akil Kureshi, J.)

(raghu)